



Headquarters

Office of Communications
300 E Street SW, MS5L9
Washington, DC 20546-0001

September 11, 2019

Taylor Amarel
MuckRock News
Dept MR 74966
411A Highland Ave
Somerville, MA 02144-2516
74966-09458235@requests.muckrock.com

REF: 19-HQ-F-00715

Dear Mr. Amarel,

This is the final response to your Freedom of Information Act (FOIA) request to the National Aeronautics and Space Administration (NASA), dated June 6, 2019, and received in this office on June 14, 2019. You seek “all emails sent to, from, or copied to James Frederick Bridenstine from January 1, 2019 to Present day, containing any of the following non-case-sensitive key-string: ‘Whistleblower.’”

Your request was initially assigned FOIA case number 19-HQ-F-00630 to which NASA issued its final response on July 26, 2019. That response notified you that NASA’s Office of Information Technology conducted a search of Mr. Bridenstine’s email account using the criteria specified in your request. That search located 344 pages of emails; however, because we categorized you as an “all other” requester and you did not state a willingness to pay any fees associated with processing the request, we only provided you with the 100 pages to which you are entitled for free. We also advised you to notify us in writing if you wished to obtain the remaining 244 pages of emails which would cost a total of \$36.60. By email dated July 31, 2019, you stated you are willing to pay that fee to obtain the remaining 244 pages. Thus, we assigned a new case number to that request (19-HQ-F-00715).

We reviewed the remaining responsive records to determine whether they may be disclosed to you. Based on that review, of the remaining 244 pages, this office is providing the following:

193 pages are released in full (RIF);
2 pages are released in part (RIP) and
49 pages are withheld in full (WIF);

NASA redacted from the enclosed documents information that fell within the following FOIA Exemption explained below.

Exemption 5, 5 U.S.C. § 552(b)(5)

Exemption 5 protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). Courts interpret Exemption 5 to incorporate three primary privileges: the attorney work-product privilege, the attorney-client privilege and the deliberative process privilege. NASA invokes the deliberative process privilege.

The deliberative process privilege is intended to protect the decision-making process of government agencies and to encourage frank discussion of legal and policy issues. The scope of the privilege covers documents reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which government decisions and policies are formulated. To qualify for the deliberative process privilege, a document must be both “pre-decisional” and “deliberative.” Documents are pre-decisional when they precede an agency decision and are prepared in order to assist an agency in arriving at its decision. Documents are deliberative when they comprise part of the process by which government decisions are made. The types of records/information NASA withheld under this exemption consists of draft proposed statutory legislation. NASA considered the foreseeable harm that would result from the release of this information and determined that its release would hinder the decision-making process, create a chilling effect on internal deliberations, lead to uninformed decision-making, and public confusion.

Exemption 6, 5 U.S.C. § 552(b)(6)

Exemption 6 allows withholding of “personnel and medical files and *similar files* the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” See 5 U.S.C. § 552(b)(6)(emphasis added). NASA is invoking Exemption 6 to protect the identities of lower level NASA employees, investigative assistants, third parties mentioned or referenced in these records and any information that could reasonably be expected to identify such individual.

Fees

The fees that may be assessed to process a FOIA request vary depending on the category into which the FOIA requester falls. 5 U.S.C. § 552(a)(4)(A)(ii)(I),(II),(III). Pursuant to the NASA implementing regulations, 14 C.F.R. § 1206.507(b), “all other” requesters are charged for duplication, although the first 100 pages are free; and search time, although the first two hours are free, after which you pay the quarter-hour rate of the searcher. The total cost for processing your request is **\$36.60**. A cost breakdown of this fee is provided on the enclosed invoice.

We are in receipt of your check #00153 issued by MuckRock Foundation. We have forwarded the check to the appropriate agency for processing. Thank you.

Appeal

You have the right to appeal my action regarding your request. Your appeal must be received within 90 calendar days of the date of this letter. Please send your appeal to:

Administrator
 ATTN: FOIA Appeals
 NASA Headquarters
 Executive Secretariat
 MS 9R17
 300 E Street, SW
 Washington, DC 20546

Both the envelope and letter of appeal should be clearly marked, "Appeal under the Freedom of Information Act." You must also include a copy of your initial request, the adverse determination, and any other correspondence with the FOIA office. In order to expedite the appellate process and ensure full consideration of your appeal, your appeal should also contain a brief statement of the reasons you believe this initial determination should be reversed. Additional information on submitting an appeal is set forth in the NASA FOIA regulations at 14 C.F.R. § 1205.700.

Assistance and Dispute Resolution Services

For further assistance and to discuss any aspect of your request, you may contact NASA's Chief FOIA Public Liaison, Stephanie Fox, via telephone at 202-358-1553 or via e-mail at Stephanie.K.Fox@NASA.gov. You may also send correspondence to Ms. Fox at the following address:

National Aeronautics and Space Administration (NASA)
 Freedom of Information Act Unit
 NASA Headquarters
 Attn: Stephanie Fox
 Chief FOIA Public Liaison
 300 E Street, S.W., 5P32
 Washington D.C. 20546
 (Fax) 202- 358-4332

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services it offers. The contact information for OGIS is as follows:

Office of Government Information Services
 National Archives and Records Administration
 8601 Adelphi Road-OGIS
 College Park, Maryland 20740-6001
 Email: ogis@nara.gov
 Telephone: (202) 741-5770

Toll free: 1-877-684-6448
Fax: (202) 741-5769

Important: Please note that contacting any agency official including the undersigned, NASA's Chief FOIA Public Liaison, and/or OGIS is not an alternative to filing an administrative appeal and does not stop the 90-day appeal clock.

If you have further questions, please also feel free to contact me at 202-358-0680 or hq-foia@nasa.gov.

Sincerely,



MIREYA P. NYIREND
FOIA Public Liaison Officer